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Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

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# Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Commissioner Kenneth L. Kimmell

October 24, 2011

*Public Comments Due: November 21, 2011*

## I. Statement of Purpose

This document outlines Commissioner Kimmell's Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP). This effort is first and foremost an attempt to strategically cope with the budget cuts MassDEP has suffered in recent years. Since 2002, MassDEP's budget has been significantly reduced, and staffing has been cut commensurately, from 1200 full time equivalents to approximately 840 today. Yet during that same period MassDEP's responsibilities have only increased through efforts to address emerging environmental contaminants of concern and passage of new legislation such as the Global Warming Solutions Act and the Massachusetts Mercury Management Act. As a result, the agency's resources are now out of alignment with its responsibilities. This deficit jeopardizes MassDEP's ability to perform its vital functions, and to maintain its position as a national leader in environmental protection.

In addition, and as a result of the budget constraints faced by state and local agencies across the Commonwealth, the Patrick-Murray Administration and the Massachusetts Legislature have made clear that our current budget constraints require us to think and act differently and that regulatory reform is a high priority in the Commonwealth.<sup>1</sup> The current staffing levels at MassDEP are inadequate to assure municipalities and the public that we will maintain the technical outreach and assistance they currently rely on, or to maintain compliance and enforcement levels that are sufficient to protect the environment and impose a level playing field for Massachusetts businesses. MassDEP has already fallen behind on certain important federal commitments for surface water and air quality activities due to inadequate staffing resources. Regulatory reform is not only necessary to address these serious existing and potential future shortfalls, but it will also help ensure that MassDEP is well-positioned to facilitate Massachusetts' economic recovery by meeting the Governor's commitment to permitting at the speed of business as permit volumes rebound from recessionary lows.

In recognition of these realities, in April of this year Commissioner Kimmell asked MassDEP to undertake a comprehensive effort to identify and implement reforms to existing regulations, policies and practices that will allow the agency to reduce staff time spent on these activities while maintaining its high standards for environmental protection. Over the past six months, MassDEP has canvassed its own staff and worked closely with outside stakeholders to develop this plan for initiating targeted reforms that will improve our operations while maintaining, and in some cases improving, environmental outcomes. Throughout the process MassDEP adhered to several guiding principles established by the Commissioner:

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<sup>1</sup> For example, Section 71 of Chapter 240 of the Acts of 2010 requires state agencies to review their regulations retrospectively to ensure they remain appropriate and current. In addition, a bill currently pending in the Legislature, S.B. 1940 "An Act to Improve the Administration of State Government and Finance", would require periodic review of the efficiency of agencies and the necessity of each of the activities of such agency.

- Proposed reforms will not weaken or undermine environmental protection standards. Changes that reduce direct oversight will be coupled with robust compliance and enforcement mechanisms.
- Proposed regulatory or permitting changes are aimed primarily at helping MassDEP manage its responsibilities within our current staffing levels, and every proposed reform measure will result in some time savings for the agency.
- All identified reforms can be implemented directly by MassDEP, without the need for legislative changes.
- None of the proposed reforms will transfer new responsibilities to municipalities, as our cities and towns are also strained by budget decreases.
- None of the proposed reforms will alter our obligations under our federal funding agreements with the United States Environmental Protection Agency (U.S. EPA) and therefore proposed reforms are largely concentrated on “state-only” programs such as wetlands, waterways, wastewater, and solid waste.

In addition, MassDEP would like to highlight several other aspects of the reforms that have been selected:

- None of the proposed reforms are intended to reduce public process, and no reforms to appeals processes have been proposed. MassDEP is committed to maintaining opportunities for public involvement and to upholding established rights to citizen appeals. In addition, MassDEP has already made significant success in reducing timelines for adjudicatory appeals, including wetlands appeals in particular, as part of the agency’s prior streamlining efforts.
- Many of the proposed reforms incentivize better environmental outcomes by reducing permitting procedures for environmentally beneficial projects or for avoiding areas with sensitive environmental resources.
- Many of the proposed reforms seek to eliminate duplication in current permitting reviews. Some of the proposed ideas eliminate duplication within MassDEP’s own programs, and several others reduce duplication with municipal approvals.
- Several of the selected reforms seek to reduce direct staff oversight of activities that are routine and that do not pose the most significant environmental protection concerns. This will allow MassDEP staff to instead focus on those activities that deserve the most scrutiny. As noted above, and throughout this action plan, changes to reduce direct oversight (e.g., moving from an individual to a general permit process) will be coupled with robust oversight and enforcement measures.

Finding efficiencies in the way we operate is not a novel idea, and many reforms have already been made at MassDEP. This initiative was expressly intended to expand upon the successful efforts launched by MassDEP in 2007 to streamline certain permitting and appeals processes and ensure that MassDEP’s permits are issued within six months as directed by Governor Patrick. Through that effort, MassDEP has already streamlined significant aspects of the wetlands appeals process, certain air permit approvals, and groundwater discharge permitting. Consequently, this plan does not contain any quick-fix solutions, nor will it solve

MassDEP's long-term budget needs in and of itself.<sup>2</sup> Nonetheless, MassDEP believes this is the broadest-based effort at comprehensive regulatory reform in the agency's recent history. This plan presents a package of proposed reforms that MassDEP believes are individually appropriate, and that will collectively allow us to shift resources to higher priority activities that we are currently falling behind on.

## II. Action Plan for Regulatory Reform

The specific targeted regulatory reforms MassDEP proposes to undertake are described conceptually below. As MassDEP moves forward with these plans, additional specific details relating to each item will need to be developed. In most cases formal regulatory changes will be required and in some cases formal policies will be established or revised. Stakeholders will therefore have additional opportunities to review and comment on each of these specific proposals, including through the usual notice and comment procedures for all regulatory changes under M.G.L. c. 30A. In addition, individually MassDEP programs will conduct additional stakeholder outreach as the regulatory and policy development process moves forward.

Following public comment on this Action Plan, MassDEP anticipates that it will issue a final Action Plan based on input received. The Final Plan may contain new ideas put forth in the comment period and may amend the ideas outlined here. Once the final Action Plan is in place, MassDEP will immediately begin to implement the selected reforms, including launching additional stakeholder outreach activities, and will endeavor to finalize the changes by the beginning of Fiscal Year 2013 (July 1, 2012).

### **A. Wetlands, Waterways and Coastal Resources**

#### 1. Coastal /Dredging Programs: Permit Consolidation

To reduce time spent by MassDEP personnel reviewing and approving the same information or aspects of projects under three separate MassDEP regulatory programs (Wetlands Protection Act, Chapter 91, and 401 Water Quality Certifications (WQC)), and to increase clarity for, and reduce time spent by, applicants/project proponents in submitting repetitive information, MassDEP will develop a common permit application that will allow applicants to reduce the submission of redundant information. In addition, MassDEP will reduce regulatory overlap between the programs by making changes to clarify when certain types of projects (e.g., utility maintenance, coastal engineering structures below mean high water) are "Adequately Regulated" by another

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<sup>2</sup> Regulatory reform is only one part of Commissioner Kimmell's overall strategy to better align MassDEP's resources with its responsibilities. MassDEP is also in the process of undertaking strategic internal restructuring efforts that will help modernize the agency's twenty year old management structure, as well as pursuing a comprehensive plan to upgrade and reinvent the agency's outdated technological capabilities. MassDEP believes that its efforts to rebuild its information technology infrastructure will, in particular, represent the greatest potential for finding significant efficiencies at the agency. However, that effort is a multi-year project that will require significant funding to be successful, and MassDEP must therefore continue to explore all feasible options for agency reform.

program. This would involve, for example, allowing a 401 WQC permit-by-rule if applicant gets an Order of Conditions/Superseding Order of Conditions (OOC/SOOC), Chapter 91 Permit, etc.). All substantive review standards and protected resource interests will be maintained.

2. Chapter 91 Licensing: Revise Restrictions on Timeframes

To reduce overall time for both project applicants and MassDEP staff, MassDEP proposes to change its current regulations to allow the Chapter 91 (c. 91) licensing process to run concurrently with Massachusetts Environmental Policy Act (MEPA) review, and also allow a c. 91 License to be issued before a final Wetlands Order of Conditions is obtained. This will reduce MassDEP permitting time and duplicative effort, while facilitating engaged public involvement by concentrating public processes to take place during a more concentrated period of time. No other permitting process contains this time restriction with respect to MEPA, and there is no clear reason to proceed differently under Chapter 91. This proposed change will not alter the MEPA regulatory timeframes for action (e.g., no Chapter 91 License shall issue until after the Secretary's Certificate on the Final Environmental Impact Report).

3. Chapter 91 Licensing: Establish a Policy for License Terms

MassDEP will develop a written policy to guide project applicants and DEP staff in establishing license terms under c. 91 for non-water dependent uses. Currently, license terms are individually negotiated. By establishing expectations in policy, the proposal will reduce DEP staff time spent on such negotiations. The proposal will also allow for greater public input on the topic of license terms because the current negotiations take place largely outside of the public view. To ensure sufficient public benefits will be achieved for specified terms, DEP will take public comment before any policy is established.

4. Chapter 91 Licensing: General License for Small Docks & Piers

Chapter 91 was recently amended to allow DEP to create a general license for non-commercial small-scale docks, piers and similar structures. Implementing this important statutory authorization will save scarce staff time in DEP's waterways program and allow the agency to focus more resources on larger projects, including non-water dependent development projects, which deserve greater scrutiny than small-scale non-commercial structures. It will also reduce the regulatory burden on small projects. MassDEP is currently working to implement this recent statutory amendment, including developing appropriate conditions for eligible projects and performance standards. Regulation changes will be necessary, and those changes will undergo a full public comment process.

5. Wetlands: Targeted Review by DEP

In order to most effectively deploy the significant agency resources spent on Wetlands Protection Act (WPA) Permitting, DEP will prioritize a variety of program activities, including immediate issuance of file numbers; increased focus on Superseding Orders of Condition; and increased priority based on significance of wetlands resource impacts. This will reduce agency time spent

on lower-value added tasks and will reduce delays for project proponents and Conservation Commissions. MassDEP will prioritize its WPA efforts in the following ways:

- DEP will assign WPA File Numbers immediately upon submittal of a Notice of Intent (NOI) to a local Conservation Commission. This will allow Conservation Commissions to act without needing to wait for DEP review of the NOI, which is increasingly difficult to do in a timely manner given staffing constraints.
- DEP will limit its review of NOIs and its oversight on local actions in order to concentrate resources on cases in which there are appeals to DEP (SOOCs). DEP intervention or participation in the local proceeding will be unusual and reserved for cases where there are particularly sensitive resources at issue. Note that DEP will continue to provide technical and regulatory assistance to the local conservation commissions and others via the Wetlands Circuit Rider program and other activities.
- DEP will also strategically deploy its SOOC review efforts to concentrate on projects with significant resource area impacts, and conduct streamlined review of projects that solely impact the buffer zone, or that involve minor residential alterations.

By concentrating DEP efforts in this manner, DEP will ensure it has adequate resources to give the appropriate level of scrutiny based on potential for environmental harm. These management efforts to more effectively target staff efforts may also allow DEP to redirect Wetlands Program staff to provide increased direct municipal assistance.

#### 6. Wetlands: Buffer Zone General Permit

MassDEP will establish a general permit or other similar regulatory provision for certain activities that are proposed for the outer fifty feet (50') of the buffer zone to inland wetlands. This proposal will reduce DEP staff time spent on SOOC review for buffer zone cases, and it has the potential to significantly benefit the environment by providing incentives for applicants to concentrate activity greater than 50' from the resource area. It will also save time for project proponents and for Conservation Commissions. This concept was previously deployed but was ultimately deemed unsuccessful because categorical restrictions limited the universe of eligible projects to a very small category. DEP will revisit that effort with an eye towards expanding the applicability of the general permit from the prior iteration.

#### 7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

MassDEP will propose regulations to exempt wetlands "resource areas" created by stormwater management structures (e.g. man-made stormwater retention basins) that were constructed prior to 1996, if the stormwater system meets DEP's performance standards. This will reduce agency time spent and streamline processes for external stakeholders by reducing the need to address these man-made stormwater structures under the more time-consuming process for regulated resource areas. This proposed change follows on regulatory changes previously made to exempt stormwater management structures that were constructed after 1996.

#### 8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening, Stream Daylighting, etc.

In coordination with the Department of Fish and Game (DFG), MassDEP has recently launched an aquatic restoration regulatory working group to identify ways to make the regulatory process less complex and more efficient for pro-active ecological restoration projects such as dam removals, culvert replacements, inlet widening, stream daylighting, etc. This will provide expedited permitting for these projects that will affirmatively enhance the environment while decreasing the amount of agency time needed to review and issue approvals and simplifying proponent processes. This effort will build on prior successful efforts to streamline permitting for dam removal projects. MassDEP expects that this working group will identify changes to the Wetlands Protection Act regulations and, potentially, other regulations in the next couple of months.

#### 9. Wetlands: Limited Project Status for Renewable Energy Projects

MassDEP will propose changes to create clear, categorical standards for renewable energy projects by expanding the categories of “limited projects” in the Wetlands Protection Act regulations. This change will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and streamlining project proponent processes. Renewable Energy Projects will be defined as projects that are eligible for Renewable Energy Credits (RECs). It is currently anticipated that the changes would involve, primarily, new limited project status for wind or solar projects and their utility or access requirements.

#### 10. Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies -- Other New Technologies

MassDEP will propose changes to one or more of the coastal permitting programs (Wetlands, c. 91, 401 WQC) to provide opportunities for approval of innovative projects, particularly for clean energy projects, on a “pilot” basis. This will help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and establishing predictable review and approval pathways for project proponents. In MassDEP’s experience, it can be difficult to review and approve proposals for new technologies or pilot projects. This is because these projects can have impacts that are different from those types of impacts contemplated when regulatory performance standards were drafted, or impacts that are unknown with a typical degree of certainty. Rather than prohibiting projects with uncertain impacts to go forward at all, MassDEP will concentrate on allowing limited pilot projects to proceed with appropriate monitoring and reporting safeguards to prevent damage to the environment.

### **B. Wastewater**

#### 11. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

Connections to and extensions of a local sewer distribution system require a permit from either a local Department of Public Works or Sewer Department prior to applying to DEP for approval.

The DEP approval typically does not apply different criteria nor add significantly different conditions than the local permit. This proposal would eliminate the current certification and permitting for all sanitary and industrial connections and extensions of the public sewer systems. Through DEP's operation and maintenance regulatory authority, we will shift resources from duplicating local permitting to instead focus on wastewater treatment and collection system issues such as infiltration/inflow (I/I), capacity issues, sanitary sewer overflows and industrial pretreatment programs. In addition, with eDEP's new electronic/online Discharge Monitoring Report ("NetDMR") submittal program (expected to be fully implemented by late spring 2012), DEP will be able to track more closely facility flows reported on a daily basis. DEP will maintain its ability to require individual permits in situations that present public health or environmental threats, such as systems that experience excessive sanitary overflows, capacity issues, or discharges that potentially could cause problems at a treatment facility.

MassDEP acknowledges that the elimination of these permit categories will, potentially, result in a small number of projects no longer being required to file an Environmental Notification Form under the MEPA regulations. MassDEP also acknowledges that the current right to appeal these permits would not exist if the permits are eliminated. However, based on the numbers of such permits issued by MassDEP in recent years, and based on MassDEP's general experience with these projects, MassDEP believes that in practice only a few projects will forgo MEPA review due to this change. In addition, MassDEP notes that it has only had one permit appeal in the past three years.

#### 12. Wastewater Title 5: Innovative/Alternative Program – 3<sup>rd</sup> Party Review

MassDEP proposes to streamline the review of "innovative and alternative" Title 5 (septic system) wastewater treatment technologies by placing greater reliance on third parties in researching, reviewing and vetting new treatment technologies. Specifically, DEP will explore options for relying on existing organizations or services that are already performing this activity (such as Barnstable County's Massachusetts Alternative Septic System Test Center, in Sandwich, Massachusetts), rather than duplicating the work with MassDEP personnel. This will allow DEP to save scarce resources while developing partnerships to provide streamlined and effective review for environmentally beneficial treatment technologies. DEP would still play a role in setting standards and provide some level of oversight technology review. DEP will also develop an auditing protocol ensure results are demonstrated in the field.

#### 13. Wastewater Title 5: Eliminate Duplicative State Approvals

MassDEP currently permits Title 5 septic system variances and "shared system" approvals which are also reviewed and permitted at the municipal level. MassDEP proposes to eliminate this duplicative approval, which will save scarce MassDEP review time while simplifying the process for project proponents. MassDEP's experience indicates that MassDEP rarely overturns the decision of the local permitting authority (local Board of Health). However, in those cases where there are particularly sensitive resources at issue, or where the project is unusually complex, MassDEP's existing regulations allow it to intervene in the local permitting process and MassDEP plans to use this existing mechanism to ensure proper oversight of particularly sensitive cases. (See 310 CMR 15.003(2)(e), allowing MassDEP to require direct approval from



MassDEP in cases where necessary to protect public health, safety, welfare and the environment).

#### 14. Wastewater: Targeted Groundwater Discharger Inspections

Based on recent assessments of its groundwater discharger inspection program, MassDEP has found that routine annual inspections of groundwater discharge facilities do not correlate well with compliance (i.e., inspections performed do not always disclose non-compliance demonstrated by DMR review). Rather than continuing with this under-performing method of compliance inspections, MassDEP proposes to reduce the current levels of routinely-selected inspections to instead focus inspection resources on facilities based on actual compliance data. Facilities will be targeted for inspections based on DMR reviews, complaints received and ongoing compliance/enforcement issues. In addition, MassDEP will continue inspections of all facilities as planned for the five year basin schedule. MassDEP believes this approach will result in increased compliance with less direct staff time from DEP. To further bolster the ongoing oversight of all facilities, groundwater dischargers would also be required to hire a qualified professional to conduct a periodic compliance/structural assessment of the facility based on the design life of the facility and expected need for repair and/or replacement. This assessment could include process evaluations as well and MassDEP will work with stakeholders to establish a workable system for third-party facility assessments by establishment of standardized review and inspection protocols and establishment of minimum qualifications for the certifying professionals. MassDEP will also conduct compliance audits to ensure the effectiveness of the third-party facility assessments, and would retain a monitoring and enforcement role with respect to all data and facilities submissions.

### **C. Solid Waste**

#### 15. Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities

MassDEP proposes to shift its current management and oversight of solid waste facilities to focus agency resources on those specific sectors/facilities where there is the greatest need for oversight while finding alternate methods to permit activities that are increasing environmental benefits and simplifying processes for permittees. Specific initiatives will include, but not be limited to:

- Permits-by-Rule for Certain Post Closure Use Activities: Passive recreation without structures; renewable energy reuse projects, and potentially others.
- Permits-by-Rule for Small Transfer Stations: Eligible transfer stations could be less than/equal to 50 tons-per-day (tpd), or 100 tpd.
- Self-Certification Transfer Station Permit Renewals: Shift to self-certification with presumptive approval for permit renewals where no modifications were made and where the facility has a track-record of compliance, rather than individual review.

These changes will be coupled with specific measures to promote accountability such as creating new permit conditions, record keeping requirements, and certification statement requirements that will ensure that applicants are under appropriate obligations to monitor and report

environmental conditions. MassDEP will also audit the submissions and impose appropriate violations for failure to meet all required obligations.

16. Solid Waste: Certified 3<sup>rd</sup> Party Inspectors for Active Landfill Inspections

MassDEP proposes to expand on the existing condition in most solid waste landfill permits for a private annual compliance inspection by creating a list of certified solid waste inspectors and annually assigning these inspectors a specified number random inspections of each of the 24 active landfills (at the permit holder's expense). This will allow MassDEP to focus its staff on highest priority activities and will benefit environmental compliance. Third-party inspection results would be forwarded to MassDEP for auditing and enforcement follow-up, and would therefore allow MassDEP to target its own inspection resources to those facilities with the greatest need for agency attention. This proposal will also allow MassDEP to require facilities to undergo review and inspection more frequently than MassDEP's resources currently allow. MassDEP will establish specific measures to impose third-party inspector accountability through eligibility and competence criteria and reporting requirements. MassDEP will also establish specific auditing procedures to screen and oversee the work performed by third parties.

**D. Waste Site Cleanup**

17. Site Cleanup: Simplify Activity & Use Limitations (AULs)

MassDEP proposes to streamline the required elements for the deed restrictions put in place to limit future use of properties where some amount of residual contamination remains after cleanup (known as AULs). This effort will likely involve development of simplified forms and streamlined public notice procedures to facilitate simpler and more understandable forms of restrictions, and it will also reduce time spent on review and approval by MassDEP. This effort will also focus on increasing availability of on-line information about recorded use limitations. This will save agency review time and will provide improved public access to AUL data.

18. Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)

MassDEP proposes to streamline or potentially eliminate the numeric ranking system, Tier Classification and permitting processes. Reducing time spent processing tier classifications/permits or NRS scores can help MassDEP focus on priority cleanup sites while improving efficiencies for the Potentially Responsible Parties which could help speed cleanup efforts. MassDEP believes that other mechanisms are already in place to address the relative priority or significance of sites (e.g. by focusing on exposure pathways, imminent hazards, etc.) without need for tier classifications/permits. DEP will therefore explore whether elements of this process can be streamlined or eliminated where functionally duplicative of other aspects of the regulatory-mandated site cleanup process (known as the Massachusetts Contingency Plan [MCP]).

## **E. Other areas**

### 19. Many Programs: Self-Certification for Certain Permit Renewals

MassDEP proposes to streamline certain permit renewals by providing for presumptive approvals where the applicant can certify that there have not been changes to either the project or applicable regulatory standards, since its initial approval and where the project has maintained its compliance status. This change has the potential to save DEP staff resources spent reviewing renewal applications that are identical to the previously-approved project applications and where regulatory standards have not substantively changed in the interim period. This will also save time & resources for the project proponents. MassDEP will review permits agency-wide to determine which categories of permits this option should be applicable to. This option will only be available to projects/parties that are currently in compliance and MassDEP will retain the ability to audit and take enforcement with respect to the submitted certifications.

MassDEP requests public comment on which programs are good candidates for this reform. MassDEP will not consider applying this reform to Air Operating Permit renewals (because such change would potentially conflict with federal requirements) or to Water Management Act permit renewals, because the standards for those permits are currently being reviewed in another context.

### 20. Many Programs: Revise Fees to Incentivize Better Results

Based on feedback from numerous stakeholders indicating that fees can be a powerful tool to facilitate desired outcomes, MassDEP will explore ways to incentivize reduced environmental impacts through fees. For example, increasing fees on the categories or permits or activities with the highest potential for environmental impact could reduce the number of projects that fall into those categories. Similarly, MassDEP will also explore ways to incentivize (or perhaps require) e-filing of applications. E-filing saves the Department significant time in reduced data entry, and fosters greater public access to information. Please note that for virtually all fee programs, MassDEP does not currently retain the fees it collects, so this is not intended as a budgetary strategy for MassDEP. Rather, it will be designed to facilitate the outcomes noted above. MassDEP will need to work with the Executive Office of Administration and Finance and other offices within the Administration on this effort.

### 21. Asbestos Abatement Requirements

MassDEP proposes to shift its current management and oversight of asbestos abatement activities to focus limited agency resources on the highest priority asbestos matters. This reform will increase environmental and public health benefits while simplifying the regulatory process for stakeholders. Specific initiatives will include, but not be limited to:

- Reduce the regulatory burden on homeowners by creating more flexible requirements for abatement of non-friable at owner-occupied residences;

- Provide greater flexibility to businesses and institutions by establishing operation and maintenance standards to deal with small scale asbestos abatement projects that currently require individual notifications; and
- Provide greater clarity and a mechanism for businesses and institutions to receive alternate work practice permits in situations where traditional asbestos abatement is not feasible.

To continue sufficient oversight of this important health-protective program, MassDEP will focus its inspections on highly sensitive asbestos removal projects where the risk of exposure is the greatest and work with municipal building departments to conduct outreach assistance. In addition, to ensure homeowners keep themselves and others safe from asbestos fiber exposure, BWP will publish and make available a guidance document titled “Asbestos in the Home: A Homeowner’s Guide” to assist homeowners in learning both health and regulatory issues associated with asbestos removal. MassDEP will coordinate with the Department of Labor Standards which licenses asbestos abatement contractors.

### III. Need for Additional Reform.

While MassDEP believes that the package of reforms listed above will allow it to make substantial progress towards aligning our permitting and compliance activities with the level of resources we currently have available, we recognize that there may be a need for more substantial reforms in order to address longer-term sustainability issues. MassDEP therefore will continue to work closely with stakeholders to explore more substantial regulatory reforms that might be feasible over a longer period of time. In particular, MassDEP will work with the Massachusetts Association of Conservation Commissions (MACC) to explore more broad-based changes to the way wetlands alterations are permitted. Similarly, MassDEP will use the experiences gained in moving towards third-party inspections in the solid waste context (see #16 listed above) to evaluate whether to make similar changes to other types of facility inspections. MassDEP will also explore whether to shift some aspects of its solid waste regulatory program to the M.G.L.c. 21E licensed site professional model. Each of these efforts will involve close coordination with impacted stakeholders and are likely to require an extended time period to discuss, review and evaluate potential reforms.

### IV. Time Savings Expected and Plan for Reinvestment.

Most of the individual reforms presented in this document result in relatively modest savings for MassDEP on an individual basis. However, when taken collectively as a package of measures, MassDEP believes that it will be able to shift significant personnel resources away from routine or duplicative activities to more pressing concerns. In particular, MassDEP will use resources saved to: ensure timely permitting as the economy recovers and permit applications increase; boost enforcement, technical assistance and outreach—particularly for municipalities; and better meet the agency’s federal obligations to impose stricter air quality regulations and to monitor and assess surface waters in the Commonwealth.

In combination with the Commissioner's efforts at agency restructuring and information technology upgrades, these regulatory reform efforts will allow MassDEP to make significant progress towards living within—and continuing to succeed within—its current staffing levels.

V. Request for Public Comments.

Commissioner Kimmell requests that interested parties submit written comments on this draft Action Plan. The Commissioner is specifically requesting comments to address the following questions:

- Are there regulatory reform ideas that have not been included in this Action Plan that should be considered by MassDEP?
- Should any of the proposed reforms be revised, eliminated, or pursued in a more expansive or limited manner?
- What, if any, additional safeguards, auditing, or public process should be included as these reform ideas move forward?
- Do the proposed reforms have any impact on environmental justice considerations?

Submit your comments no later than Monday, November 21, 2011 to the following:

**Email:** [MassDEP.Commissioner@state.ma.us](mailto:MassDEP.Commissioner@state.ma.us), or

**Hard-Copy:**

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